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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/678,871 | 10/03/2003 | Jack Wasserman | 672988/0003 | 1275 |
| 7590 Steven B. Pokotilow Stroock & Stroock & Lavan LLP 180 Maiden Lane New York, NY 10038 | | | EXAMINER VIG, NARESH | |
| | | | ART UNIT 3629 | PAPER NUMBER |
| SHORTENED STATUTORY PERIOD OF RESPONSE | | | MAIL DATE | DELIVERY MODE |
| 3 MONTHS | | | 01/03/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/678,871

Applicant(s)

WASSERMAN, JACK

Examiner

Naresh Vig

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 4, 6 - 17, 78, 80 - 83 and 85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 - 4, 6 - 17, 78, 80 - 83 and 85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08),
Paper No(s)/Mail Date :20060809, 20060109, 20051004, 20040604.

DETAILED ACTION

This is in reference to communication received 12 October 2006. Claims 1 – 4, 6 – 17, 78, 80 – 83 and 85 are pending for examination.

Response to Arguments

Applicant's arguments and concerns are for pending amended claims which have been responded to in response to the pending claims.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 – 4, 6 – 17, 78, 80 – 83 and 85 are rejected under 35 U.S.C. 112, second paragraph, as being vague and indefinite.

Applicant recites the limitation "granting the seller a right to retain at least a portion of the upfront payment conditioned upon the sale condition not being met by the end of the defined period of time wherein the seller retains a least portion of the upfront payment when the sale condition is not so met".

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Claims 7 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being vague because applicant has not positively claimed how the real estate agent offsets the purchase price because purchase price is contract price which is agreed upon between buyer and seller, and not between the real estate agent and seller.

Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being vague because applicant has not positively claimed how the real estate agent pays a percentage of commissions for sale of one or more properties to the financing agent in return for the financing because reference provide by the applicant with an IDS filed on 04 June 2004 clearly recites "No real estate broker shall pay any part of a fee, commission or other compensation received by the broker to any person for any service".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1, 3, 6, 8, 10 – 12, 78, 80 and 81 rejected under 35 U.S.C. 102(a) as being anticipated by San Diego Real Estate Library hereinafter known as REL.

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Regarding claim 1, REL teaches a method for a real estate agent to obtain a real estate listing for a property of a seller. REL teaches:

providing first consideration to the seller (guarantee sale program), wherein the first consideration includes an upfront payment to the seller (\$500 upfront guarantee)

[REL page 4];

receiving from the seller the real estate listing for the property in return for providing the first consideration to the seller (REL teaches to allow customers can cancel their listings with REL, i.e. inherent that REL receives listing from seller);

receiving second consideration from the seller (REL teaches charging 6% Fee) [REL page 4] conditioned upon a sale condition for the property being met during a defined period of time (REL teaches that they only get paid when they perform, i.e. close the sale); and

granting the seller a right to retain at least a portion of the upfront payment conditioned upon the sale condition not being met by the end of the defined period of time (REL teaches to guarantee the selling of the listing in 60 days or less, i.e. defined period, guaranteed, or we pay you, wherein the seller retains a least a portion of the upfront payment when the sale condition is not so met (customer can cash the check given to the customer at the time of listing) [REL page 8].

Regarding claim 3, REL teaches sale condition is receipt of a bona fide offer to purchase the property (REL teaches going into escrow as a condition for fulfilling their due diligence to the seller).

Regarding claim 6, REL teaches concept for receiving a refund of at least a portion of the first consideration (applicant is claiming return of deposit from the seller to the entity as their claimed invention. REL teaches seller can cash check only when the listing does not go into escrow in 60 days. i.e. seller returns check to REL as part of second consideration) .

Regarding claim 8, REL teaches idea of real estate agent receiving a commission from the seller.

Regarding claim 10, REL teaches to be working with plurality of clients.
Therefore REL teaches capability for:

- providing first consideration to a plurality of sellers;
- receiving listings from the plurality of sellers;
- receiving a second consideration from a group of the plurality of sellers for which a corresponding sale condition is met.

Regarding claim 11, REL teaches capability wherein the listing is an exclusive listing (applicant is claiming terms and conditions of an Agency Agreement between seller and the real estate agent as their claimed invention).

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Regarding claim 12, REL teaches capability wherein the group of sellers have different sale conditions (applicant is claiming terms and conditions of an Agency Agreement between seller and the real estate agent as their claimed invention).

Regarding claim 78, REL teaches capability wherein receiving second consideration includes receiving an increased commission as compared to other contracts for real estate listings (applicant is claiming terms and conditions of an Agency Agreement between seller and the real estate agent as their claimed invention).

Regarding claim 80, REL teaches capability wherein the real estate listing is an exclusive real estate listing for an exclusivity time period, and wherein the time period equals the exclusivity time period (applicant is claiming terms and conditions of an Agency Agreement between seller and the real estate agent as their claimed invention).

Regarding claim 81, REL teaches capability wherein the first consideration further includes services (applicant is claiming terms and conditions of an Agency Agreement between seller and the real estate agent as their claimed invention, for example, marketing of the seller's property).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over San Diego Real Estate Library hereinafter known as REL in view of Mini et al. US Patent 6,684,196.

Regarding claim 2, REL does not explicitly teach using a computer to track to track at least one of the first consideration, the real estate listing and the second consideration. However, REL teaches providing services over the internet. Mini teaches methods and apparatus by which a real estate transaction may be initiated and facilitated from beginning to end largely via the Internet.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify REL as taught by Mini to conveniently complete most of the stages of the transaction online.

Regarding claim 4, REL in view of Mini teaches idea wherein sale condition is an executed purchase contract.

Regarding claim 7, REL in view of Mini teaches idea of offsetting a purchase price for the property with a refund.

Claims 9 and 13 – 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over San Diego Real Estate Library hereinafter known as REL.

Regarding claim 9, it is inherent that REL teaches the idea wherein the property has an associated price (selling price / list price) and providing the upfront payment to the seller. REL does not explicitly teach real estate agent providing the upfront payment to include an advance of the price. However, REL teaches real estate agent issuing a check to the seller. It is obvious that REL real estate agent has capability of issuing a check to the seller which can also include advance of the price.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to REL real estate agent has capability of issuing a check to the seller which can also include advance of the price to allow the seller to make certain repairs to increase the value of their property.

REL teaches receiving second consideration includes offsetting monies provided to the seller based on sale of the property by the advance (obvious, shown as a line item of HUD-1 as money due to broker and charged to seller.

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Regarding claim 13, REL does not explicitly teach the real estate agent receiving financing from a financing agent. However, it is old and known to one of ordinary skill in the art that business have acquired Business Loans to run their business.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that REL agents can get business loans to maintain operations of their business.

Regarding claim 14, as responded to earlier, REL teaches capability for the real estate agent using the financing to provide the first consideration to the seller (applicant is claiming how a business can use the borrowed funds as their claimed invention).

Regarding claim 15, as responded to earlier, REL teaches capability for the real estate agent making payment to the financing agent in return for receiving the financing (applicant is claiming borrower making payment towards their loan to the lending entity as their claimed invention).

Regarding claim 16, as responded to earlier, REL teaches capability wherein the payment to the financing agent in return for the financing includes paying a percentage of the financing (applicant is claiming amortization of loan as their claimed invention).

Regarding claim 17, as responded to earlier, REL teaches capability wherein the payment to the financing agent in return for the financing includes paying a percentage of

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commissions for sale of one or more properties (applicant how a business pays their loan obligations as their claimed invention).

Claims 82 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over San Diego Real Estate Library hereinafter known as REL in view of Applicant Admitted Prior Art hereinafter known as AAPA.

Regarding claim 82, REL does not explicitly teach capability wherein real estate agent offers the seller an option including a first and a second arrangement wherein the seller selects the second arrangement. However, AAPA teaches the idea of real estate agent offering the seller an option including a first (non-exclusive listing) and a second arrangement (exclusive listing).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify REL as taught by AAPA to enable the real estate agent to provide portfolio of services to their clients for better negotiating of commissions.

REL in view of AAPA teach capability wherein when the seller selects the second arrangement and as part of the second arrangement:

offering the seller the first arrangement, wherein the real estate agent obtains the listing for the property and an opportunity to receive a first commission, and

offering the seller the second arrangement, wherein the real estate agent obtains the listing for the property and an opportunity to receive a second commission,

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wherein the second commission is greater than the first commission by an amount,

wherein the seller receives the first consideration for providing the listing in the second arrangement, the first consideration not being included in the first arrangement; and

receiving a selection from the seller of the second arrangement, wherein the second consideration includes the amount.

Regarding claim 85, as responded to earlier, REL in view of AAPA teaches capability for:

offering the seller a first arrangement wherein the real estate agent obtains the listing for the property of the seller and receives an opportunity to obtain a first commission from the seller if a first sale condition is met; and

offering the seller a second arrangement wherein the real estate agent obtains the listing for the property and receives an opportunity to obtain a second commission if a second sale condition is met, and wherein the seller receives the first consideration in return for the listing, the first consideration not being included in the first arrangement, and wherein the seller keeps at least a portion of the first consideration if the second sale condition is not met.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Applicant is required under 37 CFR 1.111 (c) to consider the references fully when responding to this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naresh Vig whose telephone number is (571) 272-6810. The examiner can normally be reached on M-F 7:30 - 6:00 (Wednesday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Naresh Vig", with a stylized flourish at the end.

Naresh Vig
Examiner
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